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② 97CV 5127

February 13, 2008

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 07-CV-6011

In Regard to the Matter of:

JOSE ORTIZ

- 18 -

WILLIAM H. FAUVER, et al.

Defendants -

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.

Certified Court Reporting & Videoconferencing  
251 South White Horse Pike  
Audubon, New Jersey 08106  
856-546-1100



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1                   JUDGE BISSELL: All right. We will reopen  
2                   the record for the purpose of a decision from the  
3                   special master consistent with the provisions of the  
4                   Order of Reference to Special Master and the Special  
5                   Master Agreement incorporated therein.

6                   Opening in the matter of Jose Ortiz,  
7                   newly assigned docket number 07-6011, a separate  
8                   transcript in that matter should be generated for the  
9                   purpose of reflecting this opinion.

10                  Pursuant to discussions with counsel  
11                  today and discussions by the Special Master with  
12                  Judges Kugler and Schneider, this decision, as in  
13                  every case submitted to me for plenary decision, will  
14                  be rendered pursuant to Local Civil Rule 52.1 which  
15                  reads in its entirety, and its mercifully brief, and  
16                  I quote: "When an oral opinion is given in lieu of a  
17                  written opinion and is transcribed, the reporter  
18                  shall submit it to the judge for revision before it  
19                  is filed," close quote.

20                  So I will follow that format and  
21                  request our reporter under the usual timetable to  
22                  provide to me a transcript of this opinion as  
23                  rendered for the purpose of its revision to the  
24                  extent that I deem it necessary.

25                  This is not to be construed as an

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1 invitation in itself for revision and/or applications  
2 for reconsideration and the like by counsel. In  
3 other words, that revision is mine. As finalized and  
4 filed after such revisions, this transcript will  
5 constitute the "written report" required under  
6 paragraph 7 of the Order of Reference to a Special  
7 Master.

8 Whether there are going to be  
9 motions for reconsideration presented before me or  
10 through whatever other review one might choose to  
11 take from this opinion, of course, is going to have  
12 to abide the decision of the respective counsel and  
13 the governing rules of court.

14 There are certain provisions in the  
15 agreements that guide the Master in the presentation  
16 of this decision. I'm to be guided by the prior  
17 rulings of this court on evidentiary and legal  
18 issues. I'm directed to recommend to the district  
19 court an award of nominal, compensatory and/or  
20 punitive damages as provided by law and as if  
21 rendered in a jury trial. And I'm directed to  
22 determine the award of any attorneys fees upon  
23 application of the prevailing party.

24 I'd rather have a discussion at some  
25 point further down the line with regard to attorney's

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1 fee applications if, as and when there are cases on  
2 which a plaintiff or more than one plaintiff  
3 prevails, rather than deal with that today; although  
4 we do have some extra time today, and if we want to  
5 address that in a somewhat academic fashion, I  
6 suppose we could.

7 As the first item of business in the  
8 opinion itself I incorporate by reference the jury  
9 instructions as set forth in the Walker and Mejias  
10 charges and to the extent applicable to the case at  
11 hand.

12 I'm now prepared to deal with the  
13 specifics of the Ortiz case.

14 He describes the alleged incident at  
15 the farm, the full minimum facility at cottage six on  
16 October 13, 1997.

17 He alleges a beating as described at  
18 the transcript for January 28th, 2008 at pages 107  
19 through 111.

20 I find, however, that his testimony is  
21 not sufficiently credible to sustain his burden of  
22 proof that this beating took place. I find that the  
23 photograph taken with regard to the supposed injury  
24 to his scalp is, in fact, demonstrative of a minor  
25 scrape, nothing that would result in permanency.

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1                   Secondly, when sitting here on the  
2 witness stand and asked to point to the apparent  
3 residual marks on his head he pointed to a different  
4 point on his head, the location as best I can recall  
5 of approximately three welts on his forehead that  
6 bore no resemblance to the contemporaneous photograph  
7 and, frankly, did not in any way appear to be the  
8 product of an incident some ten-and-a-half years ago.

9                   I note also the discrepancy between the  
10 location of his other injury as to whether it was on  
11 his back or on his right side. Apparently reported  
12 as a right side injury initially, hence the  
13 photograph of that area, and now more and more as he  
14 testified at trial in the small of his back.

15                   From the events as he described it, he  
16 claims that he still has pains in his back and head  
17 after ten-and-a-half years from the injuries he  
18 describes. Frankly, that is not credible and impacts  
19 upon his credibility regarding a description of the  
20 incident itself.

21                   He made an effort to embellish before  
22 the Master the extent of his back injury when in the  
23 same transcript at page 112, line 18 he said: "I had  
24 a tumor come out of it." Not an awful lot was made  
25 of this, but it certainly is completely unsupported

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1 and, as I said, smacked to me of an effort to  
2 embellish injuries beyond the truth.

3 P-10, the Crotty report, was introduced  
4 into evidence. I considered that also. The reports  
5 of inmates Anderson and Gonzalez do not corroborate  
6 the type of beating as described by Mr. Ortiz. At  
7 most, they would sustain appropriate inferences that  
8 he was pushed on to his bunk to hasten him getting  
9 back there because the guards didn't feel he was  
10 moving quickly enough and that in doing so his head  
11 might have been forced against the wall.

12 At most I would consider that an  
13 exercise in disciplinary action to reinforce the  
14 command of the officers. And, once again, the scrape  
15 on the forehead was minimal and not rising to the  
16 level of anything like the injury that he complains  
17 of or endeavors to persuade the Master about.

18 Finally, although not every item of  
19 evidence has been discussed in this opinion/report,  
20 all evidence presented to the Special Master was  
21 reviewed and considered.

22 Accordingly, as I said, I find that  
23 this plaintiff has not sustained his burden of proof  
24 by a preponderance of the credible evidence with  
25 regard to an Eighth Amendment violation. Indeed,

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1 the conclusion of Mr. Crotty, in his report P-10,  
2 that this event was, indeed, unsubstantiated is the  
3 same conclusion reached by myself. I recommend in  
4 this report that the District Court enter a verdict  
5 of no cause for action.

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## 1 C E R T I F I C A T E

2

3 I, Theresa O. Mastroianni, a Notary Public and  
4 Certified Shorthand Reporter of the State of New  
5 Jersey, do hereby certify that the foregoing is a  
6 true and accurate transcript of the testimony as  
7 taken stenographically by and before me at the time,  
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a  
10 relative nor employee nor attorney nor counsel of any  
11 of the parties to this action, and that I am neither  
12 a relative nor employee of such attorney or counsel,  
13 and that I am not financially interested in the  
14 action.

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Theresa O. Mastroianni

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Theresa O. Mastroianni, C.S.R.

21

Notary Public, State of New Jersey

22

My Commission Expires May 5, 2010

23

Certificate No. XI0857

24

Date: February 19, 2008

25

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